

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA

JASON SMITH)
)
) No. 1:05-CV-12/1:03-CR-90
v.)
) Chief United States District Judge Collier
UNITED STATES OF AMERICA)

MEMORANDUM

Jason Smith (“Smith”) has filed a motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255. Presently before the Court is Smith’s motion to dismiss his motion to vacate, set aside, or correct sentence (Court File No. 9).¹ Rule 12 of the RULES GOVERNING SECTION 2255 PROCEEDINGS FOR THE UNITED STATES DISTRICT COURTS directs the Court to apply the Federal Rules of Civil Procedure to this motion since this section does not specify the procedure for resolving this motion. Fed. R. Civ. P. 41 permits Smith to voluntarily dismiss his § 2255 motion if he no longer desires the relief requested in his § 2255 motion.

Accordingly, Fed. R. Civ. P. Rule 41(a)(2) provides for voluntary dismissal at Smith’s request, upon order of the Court. Smith requests the Court to dismiss his § 2255 motion with prejudice “in light of the strength of the government’s argument in its response to Smith’s motion filed pursuant to 28 U.S.C. § 2255, as well as the counter-affidavit of Smith’s trial counsel[.]” (Court File No. 9). For the foregoing reasons the motion to dismiss (Court File No. 9) will be **GRANTED**. See Rule 41(a)(2). Accordingly, this action will be **DISMISSED WITH PREJUDICE**. The Clerk

¹ Smith is reminded that his voluntary withdrawal of his motion to vacate after the statute of limitations has expired will prevent him from filing another § 2255 motion except under very limited circumstances. See 28 U.S.C. § 2255.

will be **DIRECTED** to notify the parties of this Order and to close this file.

/s/
CURTIS L. COLLIER
CHIEF UNITED STATES DISTRICT JUDGE